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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DISH NETWORK L.L.C., a Colorado  
Limited Liability Company, ECHOSTAR  
TECHNOLOGIES L.L.C., a Texas Limited  
Liability Company, and NAGRASTAR  
L.L.C., a Colorado Limited Liability  
Company,

Plaintiffs,

v.

SatFTA aka SERGEI ALEX ALEXEYEV,  
Defendant.

CASE NO. 08 CV 01561 JF (PVT)

**APPLICATION FOR ORDER FOR  
PUBLICATION OF SUMMONS AND TO  
EXTEND TIME TO EFFECTUATE  
SERVICE; POINTS AND AUTHORITIES  
IN SUPPORT THEREOF**

1 Plaintiffs DISH NETWORK L.L.C., ECHOSTAR TECHNOLOGIES L.L.C. (collectively  
 2 "EchoStar"), and NAGRASTAR L.L.C. ("NagraStar") (collectively "Plaintiffs"), by and through  
 3 their attorneys, hereby apply for an order directing service of summons on Defendant SatFTA aka  
 4 SERGEI ALEX ALEXEYEV ("Defendant") by publication in a newspaper of general circulation,  
 5 pursuant to Federal Rule of Civil Procedure 4(e)(1) and California Code of Civil Procedure  
 6 section 415.50, and for a 45-day extension of time to complete such service.

7 This application is made on the ground that said defendant cannot with reasonable  
 8 diligence be located and served in any other manner specified in Rule 4(e) or Code of Civil  
 9 Procedure sections 415.10 through 415.30, and as shown by the complaint on file herein, a cause  
 10 of action for injunctive relief and damages exists against said defendant.

11 This application is based on Federal Rule of Civil Procedure 4(e)(1), California Code of  
 12 Civil Procedure section 415.50, this Application, the Declarations of Stephen Chiari and Renee  
 13 Coltharp, the attached Points and Authorities set forth below, and the complete files and records  
 14 of this action.

15 Dated: July 2, 2008

DLA PIPER US LLP

17 By \_\_\_\_\_

18 STEPHEN CHIARI  
 Attorneys for Plaintiffs  
 19 DISH NETWORK L.L.C., ECHOSTAR  
 TECHNOLOGIES CORPORATION and  
 20 NAGRASTAR L.L.C.

## 21 POINTS AND AUTHORITIES

### 22 I. INTRODUCTION

23 This is an action for numerous violations of the Digital Millennium Copyright Act, the  
 24 Communications Act of 1934, and the California Penal Code. On March 21, 2008, Plaintiffs filed  
 25 a complaint against Defendant for unlawfully manufacturing, distributing, and otherwise  
 26 trafficking in devices, components, and technology intended to facilitate the illegal and  
 27  
 28

1 unauthorized reception and decryption of Plaintiffs' subscription and pay-per-view television  
2 programming.

3 Although Plaintiffs have diligently attempted to serve Defendant, service has not been  
4 completed. Therefore, Plaintiffs respectfully request that the Court order that the summons and  
5 complaint be served on Defendant by publication and grant a 45-day extension of time to  
6 complete such service.

## 7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

8 Plaintiffs filed their Complaint on March 21, 2008, alleging various claims based on  
9 Defendant's piracy of Plaintiffs' satellite network. Based on Defendant's illegal activities, an  
10 actual controversy and causes of action exist against Defendant. (Declaration of Renee Coltharp  
11 in Support of Application for Order for Publication of Summons and to Extend Time to  
12 Effectuate Service, at ¶¶ 1-12.) Plaintiffs' counsel caused a "person search" to be run through  
13 LexisNexis on Defendant, which indicated that Defendant has resided at 558 Olivos Drive, #210,  
14 Santa Clara, California since January 1998. (Declaration of Stephen Chiari in Support of  
15 Application for Order for Publication of Summons and to Extend Time to Effectuate Service  
16 ("Chiari Decl."), at ¶ 4.) Plaintiffs' counsel retained a process server who made ten (10)  
17 unsuccessful attempts at personal service on Defendant and thereafter "staked out" Defendant's  
18 residence with negative results. (Chiari Decl. at ¶ 5.) Plaintiffs' counsel unsuccessfully  
19 attempted to contact Defendant by telephone at the only telephone number discovered through the  
20 "person search." (Chiari Decl. at ¶ 6.) Plaintiffs' counsel additionally attempted to serve  
21 Defendant under California Code of Civil Procedure § 415.30, by mailing the complaint and  
22 summons by First Class Mail. (Chiari Decl. at ¶ 7.) Plaintiffs' counsel also attempted  
23 unsuccessfully to contact Defendant's attorney in another matter to determine whether he would  
24 accept service on behalf of Defendant or could otherwise advise of Defendant's whereabouts.  
25 (Chiari Decl. at ¶ 8.)

26 Plaintiffs have exhausted all reasonable means to effect serve on Defendant, and therefore  
27 respectfully request that the Court issue an order permitting service by publication and a 45-day  
28 extension of time to effectuate this service.

1 **III. DISCUSSION**

2 **A. This Court Has Authority to Order Service of Summons and Complaint by**  
 3 **Publication.**

4 Federal Rules of Civil Procedure 4(e)(1) provides that a summons and complaint may be  
 5 served "following state law for serving a summons in an action brought in courts of general  
 6 jurisdiction in the state where the district court is located or where service is made." Therefore,  
 7 this Court is permitted to follow state law for the proper service of a summons and complaint.

8 California Code of Civil Procedure section 415.50 allows service by publication for  
 9 persons who cannot be served otherwise. This rule provides in pertinent part:

10 (a) A summons may be served by publication if upon affidavit it appears to  
 11 the satisfaction of the court in which the action is pending that the party to  
 12 be served cannot with reasonable diligence be served in another manner  
 specified in this article and that . . . :

13 (1) A cause of action exists against the party upon whom service is to  
 14 be made or he or she is a necessary or proper party to the action.

15 Thus, service of process by publication is proper under Rule 4(e)(1) where plaintiffs make  
 16 an adequate showing of due diligence in their attempts to serve process, and procedural steps  
 17 under state law for service by publication are carefully followed. *H.B. Hunt v. Inter-Globe*  
 18 *Energy, Inc.*, 770 F.2d 145, 147 (10th Cir. 1985) (holding service of process by publication  
 19 proper under Oklahoma law).

20 As more fully detailed in the Declaration of Stephen Chiari submitted herewith, EchoStar  
 21 and NagraStar have exercised reasonable diligence in attempting to personally serve Defendant.  
 22 Such efforts have been unsuccessful. Further, as set forth in the Complaint and Declaration of  
 23 Renee Colthorp, causes of action exist against Defendant based upon numerous violations of  
 24 federal and state law. Accordingly, this Court has authority pursuant to Federal Rules of Civil  
 25 Procedure 4(e)(1) and California Code of Civil Procedure section 415.50 to order service of the  
 26 summons and complaint by publication.

1           **B.      The Time to Effectuate Service Should Be Extended.**

2           Under Federal Rules of Civil Procedure 6(b)(1)(A), a court may extend the time for  
 3 performance of any act for good cause. Moreover, Rule 4(m) provides that the court must extend  
 4 the time for service of the summons and complaint for an appropriate period if the plaintiff shows  
 5 good cause for failure to serve within the specified 120-day period after filing the complaint.  
 6 Fed. R. Civ. P. 4(m). Good cause generally means plaintiff attempted service but did not complete  
 7 it; plaintiff was confused about the requirements of service; or plaintiff was prevented from  
 8 serving defendants by factors beyond his control. *Television Signal Corp. v. City and County of*  
 9 *San Francisco*, 193 F.R.D. 645, 646 (N.D. Cal. 2000). Good cause is examined by considering:  
 10 (1) whether the delay resulted from inadvertence or whether a reasonable effort to effect service  
 11 has occurred; (2) whether defendant has been prejudiced by the delay; or (3) whether plaintiff has  
 12 moved for an enlargement of time to effect service under FRCP 6(b). *Id.* at 646.

13           Plaintiffs are seeking this extension of time to serve the summons and complaint prior to  
 14 expiration of the original 120-day requirement. As set forth above and in the Declaration of  
 15 Stephen Chiari submitted herewith, Plaintiffs have exercised reasonable diligence in attempting to  
 16 personally serve Defendant, yet their efforts have been unsuccessful. Therefore, the Court should  
 17 grant an extension of time, where, as here, good cause exists for such extension to permit  
 18 Plaintiffs to effectuate service by publication.

19           **IV.     CONCLUSION**

20           For the foregoing reasons, Plaintiffs EchoStar and NagraStar respectfully request the  
 21 Court to issue an order allowing service of the summons and complaint by publication in *The San*  
 22 *Jose Mercury News*, a newspaper most likely to give Defendant actual notice of this pending  
 23 action, and to extend the time for service to a date 45 days after the entry of the order approving  
 24 service by publication.

1 Dated: July 2, 2008

Respectfully submitted,

2 DLA PIPER US LLP

3 By /s/ Stephen Chiari

4 STEPHEN CHIARI

Attorneys for Plaintiffs

5 DISH NETWORK L.L.C., ECHOSTAR  
6 TECHNOLOGIES CORPORATION and  
7 NAGRASTAR L.L.C.

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CASE NO. 08 CV 01561 JF (PVT)

**[PROPOSED] ORDER FOR  
PUBLICATION OF SUMMONS  
EXTENSION OF TIME TO EFFECTUATE  
SERVICE**

Upon considering the application of Plaintiffs DISH NETWORK L.L.C., ECHOSTAR TECHNOLOGIES L.L.C. (collectively “EchoStar”), and NAGRASTAR L.L.C. (“NagraStar”), for an order directing service of the summons on Defendant SatFTA aka SERGEI ALEX ALEXEYEV (“Defendant”) by publication, and the evidence presented in support thereof, and it satisfactorily appearing to the Court that Defendant cannot be served with reasonable diligence in any other manner provided in Rule 4 of the Federal Rules of Civil Procedure or Sections 415.10 through 415.30 of the California Code of Civil Procedure, and it also appearing that a good cause of action exists against Defendant,

IT IS HEREBY ORDERED that:

1. Service of the summons in this action on Defendant SatFTA aka SERGEI ALEX ALEXEYEV shall be accomplished by publication in the *San Jose Mercury News*, a newspaper published and distributed in Santa Clara County, California, and designated as the newspaper most likely to give actual notice to the defendant. The publication shall be made once a week for four successive weeks as prescribed by California Code of Civil Procedure 415.50 and California Government Code section 6064.

2. A copy of the summons and complaint and of this Order for publication shall be mailed to Defendant SatFTA aka SERGEI ALEX ALEXEYEV at his last known address, and to any new addresses discovered during the term of publication.

3. The time within which to effectuate service is extended to a date 45 days after the entry of the order approving service by publication.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

UNITED STATES DISTRICT JUDGE